

October 24, 2006

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

Re: WC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime

Dear Ms. Dortch:

Enclosed please find the Connecticut Department of Public Utility Control's comments filed in response to the Federal Communications Commission's (Commission) request for comment on the Missoula Intercarrier Compensation Reform Plan filed with the Commission on July 24, 2006, by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Louise Rickard
Acting Executive Secretary

Enc.

cc: Victoria Goldberg

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Developing a Unified Intercarrier)	WC Docket No. 01-92
Compensation Regime)	
)	

COMMENTS OF THE CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

Donald W. Downes
Chairman

Jack R. Goldberg
Vice-Chairman

John W. Betkoski, III
Commissioner

Anne C. George
Commissioner

Anthony J. Palermino
Commissioner

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Connecticut Department of
Public Utility Control

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COMMENTS OF THE CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

I. INTRODUCTION AND SUMMARY

The Connecticut Department of Public Utility Control (CTDPUC) hereby submits the following remarks in response to the Federal Communications Commission's (Commission) July 25, 2006 Public Notice seeking comments on the Missoula Intercarrier Compensation Reform Plan (Missoula or Plan). The CTDPUC recognizes the need for intercarrier compensation reform and applauds the efforts of the industry

groups attempting to address this difficult and often, very contentious issue.¹ While Missoula brought various industry members to the table to begin tackling intercarrier compensation reform, the Plan falls short of achieving the Commission's expressed goals enunciated in its Reform FNPRM.²

The CTDPUc is concerned that acceptance of the Plan will increase the federal Universal Service Fund (USF) and correspondingly, the States' obligation to support that fund. This could increase the number of residential consumers receiving support from Federal and State assistance programs or even worse, service disconnection. Most upsetting to the CTDPUc is the Plan's requirement that ILECs be made whole at the expense of their competitors, their subscribers and telecommunications consumers in other States. Adoption of the Plan will also disregard the CTDPUc's prior efforts relative to access charge reform³ and preempt the States from further regulating intrastate access charges and intercarrier compensation as guaranteed by the Telecommunications Reform Act of 1996 (Telcom Act). Finally, the CTDPUc believes that acceptance of the Plan will exacerbate North American Numbering Plan (NANP)

¹ Although the number of telecommunications companies supporting the Plan is impressive, including AT&T Communications and its wireless affiliate, Cingular Wireless, and soon to be affiliate, BellSouth Corp., the CTDPUc cannot help but notice those telecommunications service providers that are noticeably absent from the list. For example, missing from the Plan's proponents are Verizon Communications, Verizon Wireless, and any cable television company (e.g., Comcast, Cox Communications and Cablevision) and their respective telephony affiliate. Also missing are various consumer advocacy groups such as the National Association of State Utility Consumer Advocates, the National Association of State Attorneys General, the Cellular Telecommunications & Internet Association, and the American Association of Retired People. Their absence as signatories to the Plan is telling.

² FCC 05-33, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, rel. March 3, 2005 (Reform FNPRM), ¶¶29-36.

³ See the June 24, 1996 Decision in Docket No. 96-04-07 DPUC Investigation into the Intrastate Rates and Charges Incurred by Long Distance Carriers to Access the Public Switched Telecommunications Network, wherein the CTDPUc revised the Connecticut intrastate access charge structure to eliminate implicit subsidies, align cost recovery more closely with cost causation principles and ordered the Connecticut ILECs to mirror their intrastate access rates and charges with those imposed in the interstate jurisdiction.

exhaust. The CTDPUc has been diligent in managing Connecticut's numbering resources as evidenced by the continued delay in introducing new area codes in Connecticut.⁴ If approved, the Plan will negate those efforts, causing Connecticut residential and business consumers to prematurely experience the confusion and costs often associated with the introduction of new area codes that the CTDPUc has successfully delayed for the past six years.

Therefore, in light of these shortfalls and as discussed in greater detail below, the CTDPUc concludes that the Plan is not in the public interest and should be rejected. In the event that the Commission does not reject Missoula, it should, at a minimum, significantly revise the Plan so that it more accurately reflects the goals of the Reform FNPRM and provides a more balanced approach for all industry service providers and consumers and most importantly, recognizes the rights of the States and their constituents.

II. DISCUSSION

A. IMPACT ON UNIVERSAL SERVICE AND INCREASES TO THE FEDERAL USF

The Plan provides ILECs with the ability to increase Subscriber Line Charges (SLC) based on market conditions. The Plan also includes provisions for subscribers participating in Federal and State Lifeline programs by protecting them from any SLC increases. The CTDPUc supports increases to the SLC when warranted and when

⁴ See the September 22, 1999 Decision in Docket No. 96-11-10 DPUC Review of Management of Telephone Numbering Resources in Connecticut, wherein the CTDPUc ordered that the 475 area code be overlaid on the existing 203 and the 959 area code be overlaid on the 860 area code because both area codes were in jeopardy of exhausting. By Decisions dated June 14, 2000 and December 27, 2000, in Docket No. 96-11-10, the CTDPUc directed 1,000 block pooling be conducted in the 860 and 203 area codes, respectively. Since those Decisions were rendered, the projected exhaust date for the 860 area code has been extended to 2009 and the 203 area code to 2008.

they accurately reflect recovery of the costs of the telecommunications network that this charge was designed to recover.

However, it is the additional costs, (i.e., the Plan's ILEC make-whole costs) proposed to be recovered from the Federal Universal Service Fund (USF) that causes the CTDPUK angst.⁵ Putting aside the equity issue of requiring Connecticut telecommunications consumers to contribute to ILEC make-whole costs, the CTDPUK is concerned that any additional increases in contributions to the USF could aggravate telephone service affordability issues for those Connecticut consumers already struggling to meet their monthly telephone service expenses.

Additionally, the CTDPUK is aware that Commission data indicate a decrease in the level of universal telephone service in Connecticut.⁶ The CTDPUK is worried that any increase in end user contributions to the USF could be of a sufficient nature to increase the number of Connecticut subscribers participating in the State's Lifeline Program, or worse yet, force them off the network altogether. It is grossly unfair to require Connecticut's consumers as well as those in other States to make the ILECs whole through the funding of the Restructuring Mechanism and Early Adopter Fee when some of them are experiencing difficulties in affording telephone service on a month-to-month basis. Clearly, the Plan's carrier cost recovery mechanisms are

⁵ The Plan creates the Restructure Mechanism, a source of revenue recovery designed to replace most of the intercarrier revenues lost by carriers, to the extent they are not recovered through increased SLC rates or restructured intercarrier charges. The Plan also creates an Early Adopter Fund for those States that have reduced intrastate access charges through explicit State funds by the time the Plan is adopted. Missoula, p. 63.

⁶ See Belinfante, Alexander, Telephone Subscribership in the United States Data through November 2005, pp. 14-21, rel. May 2006. In light of that report, the Connecticut Office of Consumer Counsel has recently petitioned the CTDPUK to investigate the change in the level of universal telephone service in Connecticut. The CTDPUK has initiated Docket No. 06-10-05, OCC Petition for DPUC Investigation into the Source of the Decline in Reported Telephone Subscribership (OCC Petition), as it considers acceptance of that petition.

inconsistent with the goals enunciated by the Commission in its Reform FNPRM and should be rejected.

Further, as indicated in the Plan, Commission acceptance of the Plan's cost recovery mechanisms are expected to result in an increase in the Federal USF at a minimum, of almost \$2 billion or 29%.⁷ This is in addition to a potential increase in the SLC of \$4.7 billion.⁸ These increases to the USF will occur even though that fund currently costs telecommunications consumers nearly \$7 billion annually, up from less than \$4 billion in 1998.⁹ It is interesting to note that the Plan proposes increases to the USF even though the Commission has been struggling with and investigating various means (as recently as August 11, 2006) to rein in USF costs.¹⁰

Moreover, Commission approval of the Plan will result in Connecticut's telecommunications consumers unfairly footing the bill of ensuring that the ILECs are fully compensated for any losses that they may experience as the entire intercarrier compensation structure is revised.¹¹ The CTDPUC is concerned that because Connecticut is a "donor" state to the federal USF, its State telecommunications users

⁷ \$1.4 Billion to \$1.6 Billion depending upon the model used by the Plan's advocates for the proposed Restructuring Mechanism and a minimum \$200 Million Early Adopter Fund. Missoula, pp. 1, 76.

⁸ *Id.*, p. 100.

⁹ See Thomas W. Hazlett, "Universal Service" Telephone Subsidies: What Does \$7 Billion Buy?, June 2006, pp. i, 8 and 9.

¹⁰ See the August 11, 2006 Commission Public Notice, FCC 06J-1, Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Support.

¹¹ Missoula proponents appear to downplay these revenue impacts on consumers, citing to a proposed pass through of reductions in intercarrier compensation rates (e.g., access) even though it does not require that any of the savings be passed along to end users nor a commitment from the Plan's proponents to do so.

will be required to shoulder an inequitable portion of that contribution which will be used to make ILECs in Connecticut and other States whole.¹²

Additionally, Connecticut's telecommunications services' end users - while not only being responsible for subsidizing other State ILECs receiving monies from the Restructure Mechanism and the Early Adopter Fund, - will also be unable to experience any financial benefit from the latter fund for the intrastate access charge reductions that the CTDPUC ordered almost ten years ago.¹³ No provisions have been included in the Plan for those States that possessed sufficient foresight to reduce intrastate carrier access charges prior to the Plan's conception. Based on this omission, the CTDPUC can only conclude that the State's telecommunications consumers will not experience any benefit from the Early Adopter Fund even though they will be subsidizing other State ILECs' rate rebalancing and restructuring efforts due to intrastate access charge reform.

Finally, the CTDPUC is concerned that acceptance of the Plan as proposed, will negatively influence the further development of the competitive local exchange market by affording only the ILECs the opportunity to take advantage of the Restructure Mechanism. It appears that the Restructure Mechanism will be funded in part by the CLECs, yet the Plan will not permit them to draw from that fund.

¹² Connecticut telecommunications consumers have previously contributed an estimated \$84.1M in 2003 and \$87.3M in 2004 to the Federal Universal Service Program while receiving only \$28M and \$17M respectively, in support for the same time period. Thus, for 2003 and 2004, Connecticut telecommunications consumers' made an estimated net contribution of \$126M to the program. 2005 FCC Universal Monitoring Report, CC Docket No. 98-202, Table 1-12, pp. 1-37 and 1-38.

¹³ See the June 24, 1998 Decision in Docket No. 96-04-07.

Therefore, the CTDPUC concludes that approval of Missoula will not meet the Commission's policy goal of preserving universal service or one which is competitively and technologically neutral.

B. STATE PREEMPTION

Missoula also provides that the States will have the discretion to decide whether to participate in certain aspects of the Plan.¹⁴ Specifically, State implementation would be voluntary relative to:

- a. *Reform for Tracks 1 and 2:* In Step 1 of the Plan, State implementation of the provisions relating to reform of *intrastate originating* access rates will be voluntary. The Plan will include incentives designed to encourage and support State implementation of this aspect of the Plan, but States will retain the authority to determine whether or not to opt in. SLC caps will increase for Track 1 and Track 2 carriers even in States that do not adopt the Plan.¹⁵
- b. *Reform for Track 3:* State adoption of the Plan's Track 3 rate levels for *originating and terminating intrastate* access traffic will be voluntary, and the Plan will establish incentives starting at Step 1 to encourage State participation. The Plan recommends that, in the rulemaking conducted at Step 4 to consider what further steps are needed to reform intercarrier compensation, the FCC will consider whether to require States to implement all Plan rates for Track 3 carriers.¹⁶

In all other respects, the Plan would be mandatory, requiring the Commission to adopt and enforce rules designed to implement these terms.¹⁷

The CTDPUC objects to those provisions requiring State preemption because there is no basis in law that provides for the elimination of State authority over intrastate

¹⁴ Missoula, p. 3.

¹⁵ The Plan further provides that at Step 2, but not before, carriers may petition the FCC to preempt State authority over Track 1 and 2 carriers' intrastate originating access rates in order to fully implement all of the Plan's terms for those carriers. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

activities.¹⁸ The Plan's advocates make this argument even though there is no express authority from Congress. The CTDPUC also objects because the Plan ignores 47 U.S.C. §§152(b) and 251(d)3, which protect State authority over intrastate rates for access and reciprocal compensation.

47 U.S.C. §152(b) states in part that:

. . . nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .

Additionally, 47 U.S.C. §251(d)3 states:

Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes this part.

Moreover, 47 U.S.C. §252 establishes the procedures for interconnection negotiations, arbitration and approval of any carrier agreements that might result from negotiation. As evidenced by §252, Congress was very careful to preserve the States' authority in either approving carrier-negotiated interconnection agreements (ICA) or casting the States as arbitrators when negotiations were unsuccessful. Commission acceptance of Missoula will conflict with §252 and undermine that authority. Had it

¹⁸ While one of the Commission's goals was that any reform measure explain the legal authority for its adoption, the CTDPUC believes that the Plan's proponents have ignored Federal law and trivialized

been Congress' intent to preempt the States on these matters, it would have included the appropriate provisions to do so. It did not.

Finally, the CTDPUC notes that the Plan's proponents' preemption claims are reminiscent of those offered during the Commission's implementation of §§251 and 252 of the Telcom Act.¹⁹ As indicated in the Local Competition Order, various parties argued that the States' role was limited when establishing interconnection requirements.²⁰ Yet, the Commission correctly recognized that §§251 and 252 created a parallel jurisdiction for the Commission and the States.²¹ The Commission also correctly determined that the local competition provisions of the Telcom Act were directed to both intrastate and interstate matters.²² Nothing has changed since the Commission released its Local Competition Order that would preempt the States from regulating interconnection and intrastate access charge matters today.

While the Commission has required that any reform proposal explain its legal authority to adopt such a plan, to the degree that the States have been preempted by the Plan, Missoula fails to provide the appropriate legal rationalization which would permit it to accomplish interconnection reform.

C. NUMBERING RESOURCES

Lastly, the CTDPUC is afraid that acceptance of the Plan will place excessive pressure on the NANP and unnecessarily accelerate the date by which it is estimated to

the States' authority in this matter.

¹⁹ See CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 95-185, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order (Local Competition Order), rel. August 8, 1996.

²⁰ Id., ¶¶71-77.

²¹ Id., ¶85.

²² Id., ¶87.

exhaust. In particular, the CTDPUc is concerned that the Plan would increase the requirement for Location Routing Numbers (LRN) which are used in pooling and portability to properly route telephone calls. LRNs are essentially ten digit dialing numbers that must be obtained from pristine 10,000 blocks of telephone numbers. Requirements for LRNs are on a carrier-by-carrier basis since they identify a carrier's switch. The CTDPUc believes that obtaining LRNs for network expansion for purposes of directly interconnecting in rural areas will easily increase the opening of 10,000 blocks in those areas where the balance of the existing blocks would not likely be used for several years based on carrier forecasts. This, in turn, potentially causes an increased need for area code relief and accelerating NANP exhaust.

Additionally, since 1996, the CTDPUc has been diligently managing Connecticut's telephone numbering resources. Through rate center consolidation and employing number optimization and conservation techniques (e.g., number porting and pooling) the CTDPUc has successfully delayed the introduction of new area codes in Connecticut from the late 1990s to the first quarter 2008 and second quarter 2009 in the 203 and 860 numbering plan areas (NPA), respectively. Through these efforts, Connecticut residents and businesses have been spared the expense and nuisance commonly associated with the introduction of new area codes.

Nonetheless, the CTDPUc's efforts in this area will be for naught should the Connecticut 203 and 860 NPAs be exhausted prematurely due to the Commission's adoption of Missoula.

III. CONCLUSION

The CTDPUC recognizes the need for intercarrier compensation reform and appreciates the efforts of the industry in tackling this very difficult issue. However, Missoula fails to meet the Commission's goals for intercarrier compensation reform, is not in the public interest and for the reasons discussed above, should be rejected.

Respectfully submitted,

CONNECTICUT DEPARTMENT OF
PUBLIC UTILITY CONTROL

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CERTIFICATION

Miriam L. Theroux
Commissioner of the Superior Court